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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,047	11/09/2001	Michael J. Whalen	032167.0001	1649

22467 7590 06/20/2006

WILLIAMS MULLEN
FOUNTAIN PLAZA THREE, SUITE 200
721 LAKEFRONT COMMONS
NEWPORT NEWS, VA 23606

EXAMINER

MAI, TRI M

ART UNIT PAPER NUMBER

3727

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

JP

Office Action Summary	Application No. 10/053,047	Applicant(s) WHALEN ET AL.	
	Examiner Tri M. Mai	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the means for attaching the device to the painter, and the insert for the two storage compartments must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 1-7, 12, 13, 16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Engh (3351970) or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Engh in view of Millard (D499553). Engh teaches a first storage compartment having a compartment 1, means for attaching 16, and a shoulder strap 17.

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To the degree it is argued that Engh does not teach a means for attaching to a belt, it would have been obvious to one of ordinary skill in the art to provide a belt attaching means as taught by Millar (note the loop attachment means) to provide an alternative attachment means.

3. Claims 8, 9, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engh rejection, as set forth in paragraph 2, in view of Jaques (4363433). Engh meets all claimed limitations except for the second storage Jaques teaches that it is known in the art to provide second compartments 30, 50. It would have been obvious to one of ordinary skill in the art to provide a second compartments to provide enable one to accommodate an additional brush.

4. Claims 10, 11, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engh in view of Jaques rejection as set forth in paragraph 3, and further in view of Butschat (6283345). Butschat teaches that it is known in the art to provide an insert in the compartment of Engh to provide additional storage device.

Furthermore, it would have been obvious to one of ordinary skill in the art to provide the insert of Butschat in the second compartment of Engh/Jaques combination to provide additional storage device.

5. Applicant's arguments have been fully considered but they are not persuasive. With respect to the drawings objection, the examiner submits that 37 CFR 1.83(a) requires that all claimed limitations must be shown in the drawings. Thus, the means for attaching the device to the painter, and the insert for the two storage compartments must be shown as required by 37 CFR 1.83(a).

With respect to the Engh reference, applicant asserts that Engh fails to disclosed a belt attachment means. The examiner submits that the hook portion 16 can be used to support the

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device on a belt as claimed. There is no structural difference between the claimed belt support and the supports 16 in Engh. In fact, applicant shown no attachment means whatsoever in the drawings as noted by the drawing objection.

Furthermore, applicant asserts that Engh fails to teach the roller being perpendicular to the body of the painter. It is noted that the disclosure only shows the handle portion of the roller is parallel to the painter, and the roller portion is perpendicular to the painter. The examiner submits similar to that of applicant's disclosure, the roller portion R when portion 16 is attached to the belt.

With respect to rejections of Engh and Jaques and Butschat, applicant rehashes the argument that portion 16 is not meant for attaching on the belt. The examiner submits that the "means for attaching to the belt" is broad and there is no structural difference between the disclosed "means for attaching to the belt" (see drawing objections above) and the portions 16 in Engh. **The claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.**

Furthermore, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir.

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1992). In this case, one in the skill of the art would recognize that painting requires a variety of equipment and to provide an additional compartment, as taught by Jaques and other insert as taught by Butschat would have been obvious to one of ordinary skill in the art.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai
Primary Examiner
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